



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

June 30, 2004, and July 31, 2004, Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdf.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – JUNE 2004

Case Name

Court Number

Farmer Bros. Co.	Los Angeles Superior Court No. BC237663
Noble, Homer E. & Stephanie F.	Los Angeles Superior Court No. BC273634
OTN, Inc., & Affiliates	Los Angeles Superior Court No. BC301102
Yoo, Won s. & Insook	San Diego Superior Court No. GIC807106

FRANCHISE AND INCOME TAX
NEW CASES – JUNE 2004

Case Name

Court Number

Shafran, Allen J. & Toby	Los Angeles Superior Court No. BC316070
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FRANCHISE AND INCOME TAX
CLOSED CASES – JULY 2004

Case Name

Court Number

Weingarten, Saul M.	San Francisco Superior Court No. 996766
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FRANCHISE AND INCOME TAX
NEW CASES – JULY 2004

Case Name

Court Number

NONE

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

JUNE & JULY 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell
O'Melveny & Myers, LLP

Filed – 05/23/03

FTB's Counsel

Brian Wesley

- Issue
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

Years 1992 and 1993 Amount \$4,912,037.26

Status **Plaintiffs' Trial Brief filed June 1, 2004. Trial completed on July 21, 2004. Defendant's Notice of Entry of Judgment filed July 23, 2004.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow
Heller, Ehrman, White & McAuliffe, LLP

Filed – 10/23/03

FTB's Counsel

David Lew

- Issue
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
 2. Whether section 24344(b) controls the allocation of interest expense.
 3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
 4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
 5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Years 1991 Amount \$2,824,983.00

Status Discovery proceeding. Mandatory Settlement Conference scheduled for September 1, 2004, and Trial scheduled for September 20, 2004.

BRESLOW, BARRY & WENDY v. Franchise Tax Board

Los Angeles Superior Court Docket No. 03K20961

Taxpayer's CounselCharles P. Rettig, Steven D. Blanc & Sharyn Fisk
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed – 12/02/03

FTB's Counsel

Felix E. Leatherwood

- Issue
1. What portion of the Program Area Sales and Use Tax Credit passes through to shareholders in an S Corporation?
 2. Whether the Franchise Tax Board should be equitably estopped from denying the claim for refund.

Year 1994 Amount \$49,500.00

Status Case Management Review scheduled for September 13, 2004.

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's CounselEric J. Coffill, Carley A. Roberts
Morrison & Foerster, LLP

Filed – 02/07/03

FTB's Counsel

Steven J. Green

- Issue
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
 2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years 1974-1982, 1984-1987, 1989-1991 Amount \$2,912,696.00

Status Discovery proceeding. **Trial Setting Conference continued to September 20, 2004.**

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733Taxpayer's CounselJoanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffe

Filed - 12/20/89

FTB's Counsel

Steven Green

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years 1980 through 1985 Amount \$1,137,006.98

Status On Appeal for decision in favor of Defendant/Respondent, waiting for Court of Appeal to set date for Oral Argument. **Supplemental Briefing on New Authorities scheduled for August 30, 2004.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Court of Appeal, 1st Appellate District, No. A106315Taxpayer's Counsel

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

- Issues
1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
 2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status **Defendant/Appellant's Notice of Appeal filed on April 30, 2004.**

FUJITSU IT HOLDINGS, INC. v. Franchise Tax Board**[Amdahl Corporation v. Franchise Tax Board] 120 Cal.App.4th 459****San Francisco Superior Court Docket No. 321296**

Filed – 05/14/01

Court of Appeal, 1st Appellate District Court Div. 2, No. A101101 (FTB)Court of Appeal, 1st Appellate District Court Div. 2, No. A101203 (Amdahl)**Court of Appeal, 1st Appellate District Court Div. 2, No. A102558 (Attorney's fees)**Taxpayer's Counsel

Timothy K. Roake

Fenwick & West LLP

FTB's Counsel

Kristian Whitten

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status **Opinion filed on July 7, 2004; Judgment is affirmed in favor of Plaintiff (Certified for Publication). Petition for Rehearing of Defendant/Appellant filed July 22, 2004. Petition for Rehearing denied on July 27, 2004.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Filed – 03/06/02

Court of Appeal, 2nd Appellate District No. B165665Taxpayer's CounselFTB's Counsel

Charles R. Ajalat

Stephen Lew, Donald

Law Office of Ajalat, Polley & Ayoob

Currier & Joseph O'Heron

Issues

1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years

1986 through 1988

Amount \$10,692,755.00Status

Opinion: Appellate Court affirmed the trial court and sustained in favor of FTB on June 30, 2004. Court of Appeal's Order Modifying Opinion and Denying Rehearing filed July 28, 2004 [no change in Judgment].

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's CounselFTB's Counsel

Eric L. Troff, Esq.

Donald Currier

Gibbs, Giden, Locher & Turner, LLP

Issue

Whether Plaintiffs were entitled to a business bad debt reduction.

Years

1990 & 1993

Amount \$65,738.00StatusTrial scheduled for November 29, 2004. **Discovery proceeding.**

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's CounselRichard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtinger & Kinsella, LLP

Filed – 03/18/03

FTB's CounselAnthony Sgherzi
George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Years 1993 Amount \$1,172,932.00

Status **Plaintiff's Notice of Order to Show Cause Re: Dismissal filed on July 7, 2004. Final Status Conference held on July 8, 2004; Trial vacated. Hearing scheduled for August 27, 2004, on Order to Show Cause Re: Dismissal (after Settlement).**

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's CounselThomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel**James W. Bradshaw
McDonald, Carano,
Wilson LLP,
Las Vegas, Nevada**

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:
Notice of Withdrawal of California Attorney General as Attorney of Record filed July 28, 2004.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2nd Appellate District Court No. B175952Taxpayer's CounselDerek L. Tabone, Esq.
Law Offices of Tabone, APC

Filed – 07/09/03

FTB's CounselBrian Wesley
Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999-2001 Amount \$209,742.00

Status **Plaintiffs' Notice of Appeal filed on June 7, 2004.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel

Edwin P. Antolin

Silverstein & Pomerantz

Jordan M. Goodman, Brian L. Browdy

Horwood, Marcus & Berk

FTB's Counsel

George C. Spanos

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year

1987

Amount

\$133,042.00

Status

Court Order; Granting Defendant Franchise Tax Board's Motion for Summary Judgment filed June 28, 2004. Plaintiff's Notice of Appeal filed on July 12, 2004.

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Filed – 04/11/03

Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Taxpayer's Counsel

Charles F. Smith

Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Michael Cornez

Larry Fischer

Issue

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.
9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

Years

1986-1989, 1992-1994,
1999 & 2000

Amount

\$3,524,625.00 - Tax
\$ 82,590.01 - Penalty

Status **Status Conference rescheduled for August 31, 2004.**

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Court of Appeal, 1st Appellate District Court No. A102915

Taxpayer's Counsel

FTB's Counsel

Edwin P. Antolin

Joyce Hee

Morrison & Foerster, LLP

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
 2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years 1993 and 1994 Amount \$2,185,718.00

Status **Court of Appeal's Order Denying Plaintiffs/Appellants' Request to Delay Oral Argument, but granting their request for supplemental briefing to address the applicability of the *General Motors* case filed June 20, 2004.**

THE LONG TERM INVESTMENT/Trustee Chase Bank v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 312094

Filed – 03/12/04

Taxpayer's Counsel

FTB's Counsel

Jeffrey G. Varga, Ethan Lipsig

Donald R. Currier

Paul, Hastings, Janofsky & Walker, LLP

Issue Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

Years 1994, 1997 through 2000 Amount \$2,905,255.00

Status **Answer to the Complaint filed June 21, 2004. Case Management Conference continued to August 30, 2004.**

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's Counsel

FTB's Counsel

William E. Taggart, Jr.

Marguerite Stricklin

Taggart & Hawkins

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **Defendant's Opening Brief for Trial on Remand filed on June 15, 2004. Defendant's Opposition to Plaintiffs' Opening Trial Brief on Remand filed July 15, 2004. Plaintiffs' Response to Defendant's Opening Brief for Trial on Remand filed July 16, 2004.**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board	
San Francisco Superior Court Docket No. CGC 03424737	Filed - 09/24/03
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang	Anne Michelle Burr
Pillsbury Winthrop, LLP	

Issue 1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years 1993 and 1994 Amount \$606,744.00

Status **Order Continuing Trial Date to December 6, 2004, filed July 7, 2004. Mandatory Settlement Conference rescheduled to November 17, 2004.**

MICROSOFT CORPORATION v. Franchise Tax Board	
San Francisco Superior Court Docket No. 400444	Filed – 10/19/01
Court of Appeal, 1 st Appellate Dist. Div. 3 No. A105312	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
James P. Kleier, Esq.	Julian O. Standen
Preston Gates & Ellis, LLP	

Issues 1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status **Plaintiff/Respondent's Brief filed July 6, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board	
San Diego Superior Court Docket No. GIC772282	Filed – 08/27/01
Court of Appeal, 4 th Appellate Dist. Division 1, No. D043058	
Court of Appeal, 4 th Appellate Dist. Division 1, No. D044362	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	
Kevin Duthoy & Joseph A. Vinatieri	
Bewley, Lassenben & Miller, LLP	

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

<u>Year</u>	1993	<u>Amount</u>	\$227,246.00
<u>Status</u>	Extension granted by the court on July 15, 2004, to file Defendant/Appellant's Reply Brief.		

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381	Filed – 08/27/01
Court of Appeal, 4 th Appellate Dist. Division 1, No. D043058	
Court of Appeal, 4 th Appellate Dist. Division 1, No. D044362	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	
Kevin Duthoy & Joseph A. Vinatieri	
Bewley, Lassenben & Miller, LLP	

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

<u>Year</u>	1993	<u>Amount</u>	\$670,825.00
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Status **Extension granted by the court on July 15, 2004, to file Defendant/Appellant's Reply Brief.**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767	Filed – 12/30/02
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Antolin, Pilar M. Sansone, Amy Silverstein	Gregory Price
Silverstein & Pomerantz, LLP	

Issues

1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

<u>Years</u>	1989 through 1994	<u>Amount</u>	\$2,694,192.00
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Status Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 2004.

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board

U.S. District Court For The Eastern Dist. No. CIVS-03-1126	Filed – 05/27/03
First Amended Complaint	Filed – 08/25/03
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Spencer T. Malysiak	Michael J. Cornez
Spencer T. Malysiak Law Corp.	

Issue 1. Whether the federal courts have jurisdiction to review a denial of a claim for refund of state taxes and issue a declaratory judgment as to plaintiff's liability for state taxes.
 2. Whether the Indian Gaming Regulatory Act (25 U.S.C. 2701) pre-empts state taxation of income earned by non-Indians from operating a casino.
 3. Whether an action can be maintained in federal court against the Board Members and Executive Officer as individuals under the *Ex Parte Young* doctrine to enjoin the collection of state taxes.

Years 1996 Amount \$2,562.93

Status Defendants', Steve Westly, Carole Migden, Steve Peace, and Gerald H. Goldberg, Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint filed May 7, 2004.
 Hearing on Motion to Dismiss held on May 17, 2004.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed – 10/10/03

Taxpayer's Counsel

FTB's Counsel

Spencer T. Malysiak

Michael Cornez

Spencer T. Malysiak Law Corp.

Issue 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
 2. Whether a declaratory relief action can be brought to prevent the collection of tax.
 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
 4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status **Defendant's Demurrer to the Second Amended Complaint is Sustained in Part Without Leave to Amend with respect to AKA Industries and Overruled with respect to New Gaming System. Defendant's Request for Judicial Notice in respect to AKA Industries is granted on July 29, 2004.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Filed – 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

Taxpayer's Counsel

FTB's Counsel

Richard C. Field

Michael R. Weiss

Bingham McCutchen LLP

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Court of Appeal's Published Opinion in favor of Plaintiffs/Appellants filed July 28, 2004.**

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Filed – 02/20/01

Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602Taxpayer's CounselFTB's Counsel

Allan L. Schare

David Lew

McDermott, Will & Emery

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Defendant/Respondent's Brief and Appendix filed July 28, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Filed – 09/13/01

Appellate Court – 1st Appellate Dist. Court No. A102401**California Supreme Court No. S 125369**Taxpayer's CounselFTB's Counsel

Edward Winslow

Marguerite Stricklin

Layman, Lempert & Winslow

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status **Plaintiffs/Respondents' Petition for Review to the California Supreme Court filed on June 8, 2004. Petition for Review denied on July 21, 2004. Remittitur issued on July 29, 2004.**

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1st Appellate Dist. Court No. A105155Taxpayer's CounselFTB's Counsel

Jeffrey M. Vesely, Esq.

David Lew

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Defendant/Respondent's Brief filed on June 10, 2004. Plaintiff/Appellant's Reply Brief filed on July 12, 2004.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Taxpayer's Counsel

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

Filed – 05/25/04

FTB's Counsel

Anthony F. Sgherzi

Issue Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Years 1992 **Amount** \$45,415.00 Tax
9,083.00 Penalty

Status Summons and Complaint filed on May 25, 2004, and served improperly on Los Angeles Franchise Tax Board office on June 2, 2004.

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Court of Appeal, 4th Appellate Court No. C045386Taxpayer's Counsel

Eric J. Coffill

Carley A. Roberts

Filed - 07/17/01

FTB's Counsel

Michael J. Cornez

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 **Amount** \$5,342,122.00

Status Defendant/Respondent's Opening Brief filed July 30, 2004.

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Taxpayer's Counsel

Amy L. Silverstein

Silverstein & Pomerantz, LLP

Filed – 08/05/03

FTB's Counsel

Paul Gifford

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

Years 1997 **Amount** \$205,874.00

Status Judgment for Plaintiffs filed July 8, 2004. Notice of Entry of Judgment for Plaintiffs filed July 12, 2004.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

Issues

1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years

1986 and 1987

Amount

\$1,741,534.00

Status

Minutes Entered; Court's Ruling in favor of Defendant filed June 22, 2004. Defendant's Proposed Statement of Decision filed June 28, 2004. Plaintiff's Objections to Proposed Statement of Decision filed July 6, 2004.